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ROUTING AND RECORD SHEET

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SUBJECT: (Optional)

FROM:

6E46, Hqs.

SA/DDS&T

EXTENSION

NO.

DDS&T-977-78, 3

DATE

pro Legislation

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

/OLC

Per [redacted] memo NFAC-729-78, 23 Feb. 78) attached are comments concerning the issues raised by OLC and were attached to [redacted] memo.

CC: [redacted]

8 MAR 1978

11C-78-0730/3

Comments: Issues - Title IV - CIA, 23 February 1978
(Paragraphs keyed to issues paper paragraphs)

1. I do not believe CIA should be charged with conducting "counterterrorism activities", as defined in Title I, para 104 (7)(C). However, a strict reading of EO 12036 assigns that responsibility to CIA. In the EO, para 1-804, "The CIA shall: Conduct counterintelligence activities outside the U.S. and coordinate counterintelligence activities conducted outside the U.S. by other agencies within the intelligence community." The definition of counterintelligence found in the EO, para 4-202, states: "Counterintelligence means information gathered and activities conducted to protect against...international terrorist activities..." (underlined added). I have no problem with assigning the coordination function to the CIA "outside" the U.S., but to expect that the CIA will physically counter terrorists overseas is beyond our capabilities, such activity more properly fits the military.*

2. I believe there is a difference between the wording of the NSA of 1947 and Title IV, para 411. The words "direction and control" are more positive, denoting that all activities are directed and controlled. The EO, however, states that the NSC provides "review of, guidance for, and direction to the conduct of all national foreign intelligence and counterintelligence activities." The EO means in this case the entire intelligence community. The EO also states that the DCI is "responsible directly to the NSC" but later states that he is "the primary advisor...to the NSC on national foreign intelligence." I prefer the less restrictive language of the NSA of 1947.*

3. I agree with the suggested change in the definition. The words "not publicly known" are subject to misinterpretation, as many Agency personnel think that once an item appears in the news media, the subject of the item is publicly known and declassified. The suggested fix is clear, easily understood and is positive in its meaning.*

4. The EO clearly shows the preference of the President to have the DCI as senior officer in the Community for specific functions and at the same time be head of the CIA. If the DCI is a separate person from the DNI I am certain that Congress would have a "field day", calling

on one or the other for information, views, and results. You will note that S-2525 does not, as the EO states, provide that the DNI or D/CIA "act as the primary advisor" or act...."as the Intelligence Community's principal spokesperson to the Contress..." If Congress is concerned about making a serious effort for oversight they should insist on having one individual who is accountable and they can look to for answers and will speak for all activities. The SSCI Staffers "political compromise" is not a prudent course in writing the law of the land. If Congress wants to "tie someone to the cross" let it be one individual and not play one individual against another.

5. Paragraph 412 (a) weakens Congressional oversight since the DDNI or any ADNI may act as D/CIA. If the concept of this paragraph remains then additional provisions should be added both in this paragraph and in 117 to provide for the delegation of "powers and authorities" to whomever is the D/CIA.

6. I believe the combination of the words "willing voluntarily" are an overkill. In fact almost any recruitment pitch might be ruled out since such action almost always has an element of coercion or persuasiveness. I defer to the DDO for support on this point. I agree that the wording of the EO on collection (1-801) is more direct and permissible language.*

7. The collection of information by CIA should relate to "foreign intelligence" as defined and not to "integrally and exclusively" to Agency activities. I believe it is an Agency responsibility, that if information relates to foreign intelligence - collect it -.*

8. I disagree with the concept that the Congress is a coequal with the Executive Branch as expressed in paragraph 413 (c). An extension of the meaning of this paragraph, "to meet the needs of...the Congress", also means that Congress could lay on requirements for collection of information. Congress is a consumer-recipient of information.*

9. I suggest the words "as the DNI's agent" be deleted. If the DNI and the D/CIA are the same individual there is no need for the Agency to act as an agent. If, however, the DNI and D/CIA are separate individuals then

the Agency component assigned the responsibility to coordinate all counterintelligence and counterterrorism activities does so completely under the control and direction of the DNI, and the D/CIA would have no authority. The component would serve two masters but on different aspects of the same function, CI and CT. This function may best be placed under the section on the functions of the DNI since it is his responsibility to coordinate CI and CT activities. Then under the duties of the D/CIA add the "carrying out" of the coordination function.*

10. The point in paragraph 413 (g)(2) concerning "as directed by the DNI" raises a much broader concept. Paragraph 411 states that the CIA shall be under the direction and control of the NSC. Paragraph 412 (a) states that the Director (CIA) shall be subject to the supervision of, and responsive to intelligence plans, objectives, and requirements established by, the DNI. And finally paragraphs (g)(2) and (g)(3) specifically involve the DNI. In summary these paragraphs are inconsistent, promote ambiguity and lack understanding of where the CIA really fits in. Does this mean when the CIA is conducting services of common concern and foreign liaison, the Agency is under the DNI, at other times when being responsive to intelligence plans, objectives and requirements, the Agency is under the D/CIA, and at other times the Agency is under the NSC.*

11. Paragraph 413 (g)(3) does not mean all liaison with foreign governments. Therefore any equity that the State Department may have in liaison with foreign governments is protected by the introductory paragraph to this section, paragraph 413 (a), which states that "all activities...of the Agency shall be related to intelligence functions set out in this section..." I prefer the second suggested change for paragraph 413 (g)(3).*

12. I agree with all three points raised with respect to the "Office of the Director" (DNI). A definition may not be possible or desirable, but should remain loosely defined as stated in paragraph 113 (a), as a staff to "carry out the responsibilities of the director" (DNI). Until the other points are resolved such as the possible split between DNI and D/CIA and other related issues as discussed above, a decision on definition should be delayed to determine if needed.

13. Paragraph 413 (g)(5) provides one additional definitive support than that provided in the EO, i.e., audit services. I am assuming under the term "other administrative support" this would include logistics, communications, security, personnel administration, finance, training, etc. which are currently considered under the DDA/CIA. However, I do feel that if legal and legislative support are specifically mentioned it might be wise to include the Inspector General. Once again the future of this paragraph lies in the resolution of whether the DNI and D/CIA are one and the same individual.

14. The suggested change using the EO language is definitely preferred.*

15. I find this paragraph totally redundant.

The Oversight Board reports to the President, AG, and the Director; 151 (d)

Each General Counsel and Inspector General reports to the Oversight Board, the Director, AG, and Congress; 151 (e)

The AG reports to the Oversight Board, the President, the Director, and Congress; 151 (f)

Heads of each entity report to the Director, Congress, AG; 151 (g)

Each employee reports to head of entity, the Director, AG, Oversight Board, and Congress; 151 (j)(3A)

It appears to me that the requirement in this paragraph for one more review and one more report by the AG and DNI is more than overkill. If such review is deemed necessary, do so in paragraph 151 and include the results in one of the other reporting requirements by the AG and DNI.*

16. I agree the addition of a new sub-paragraph, (i), to 413, using the language of the EO paragraph 1-812 is highly desirable. I suggest that the following be added at the end of the addition, for emphasis, "and as provided for in Parts C, D, E, and F of this title."*

17. I believe that the written certification is sufficient. If the funds are for activities authorized by this title, approved by the DNI and the D/OMB that should be sufficient accountability for Congress. Why should Congress be notified each time for "authorized activities" and approved by both the DNI and OMB.*

18. I agree that the other categories of individuals listed should be added to paragraph 421 (a)(6).*

19. Since paragraph 421 (a)(1-17) is a shopping list of Agency authorizations it is wise to include authorization for all functions. Your query concerning budgetary and personnel services are good examples for inclusion. A careful study of this paragraph by the DDA should provide a list of other items which should be included.*

20. See above remarks.

21. I defer to O/Log to the need for inclusion of a provision for selling and purchase of property. Your proposal in paragraph (b) appears to be an acceptable solution.

23. I agree that the "Agency budget" should be included in paragraph 421 (g).*

24. I believe paragraph 421 (i) covers the Agency needs, but explicit comment is deferred to OC. You may wish to consult with OGC on the language which has been sent to Congress (?) or OMB or the AG.* I am not sure, requesting legislation in this arena.

25. I defer comment on paragraph (j) (1 & 2) to the Office of Personnel.

26. The procurement authority provided in paragraph 422 is broader than that provided in paragraph 3 of the CIA Act of 1949 but more restrictive than that provided in paragraph 8 of the 1949 Act.

Paragraph 3 of the 1949 Act made available nine authorities in the Armed Services Procurement Act of 1947 to provide for negotiated rather than advertised procurements. In the present bill all fifteen authorities are provided.

Paragraph 8 provided that the Director's certification on expenditure of funds for confidential purposes was adequate. Comptroller General audit was not authorized. Under the proposed bill every deviation from Chapter 137 or 139 of Title 10 USC must be reported to the Congressional Oversight Committees together with reasons for exercising such waiver. A waiver would be necessary to the provision of paragraph 2313 of Chapter 137 which authorizes the Comptroller General to examine the books and documents of contractors.

A waiver would presumably also be required from the requirement set forth in paragraph 2350 of Chapter 139 that a report be made to Congress on all R&D contracts with a value of \$50K or more that were made during each six-month period.*

27. We are in the process of writing procedures, for AG approval, to implement EO paragraph 2-303. It may be premature to comment at this time until we negotiate those procedures and determine what effect they will have on our procurement activities.*

28. The EO under paragraphs 2-308 (b) and 2-309 (c) allows the use of expert personnel first as authorized by law and secondly to law enforcement authorities governed by AG procedures, except when lives are endangered. This bill, without a definition of exigent circumstances, places the use of expert personnel in the category of "when lives are endangered" or exigent circumstances. We prefer the inclusion of expert personnel but not under exigent circumstances.*

29. I agree that the use of the word "request" in 423 (4 and 5) eliminates any authorization granted, as this section is intended. These paragraphs need to be stated in a positive manner so that when the Agency makes a determination action will take place "as authorized" and not left standing with a passive "request".

30. I agree that the use of the word "lawful" implies that the Agency is engaged in unlawful activities. The change you have suggested in paragraph 32 is an excellent fix. I suggest, however, that the last phrase repeat which expenditures are to be approved by the DNI. For example, end the first sentence after the word Act. Then add "When such expenditures are for activities of an extraordinary or emergency nature they shall be approved in advance by the DNI pursuant to the authority in section 122 (c) of this act." *

31. See comments above.

32. The addition of a new paragraph to clearly cover the reporting requirement and provide oversight by the Congress on these extraordinary, emergency, or national security activities is in order, and the suggestion you have provided should be easily adopted by the Congress.

33. There is no problem in informing OMB of the facts and circumstances of any proposed withdrawal from the reserve. To help clarify this paragraph we suggest the following: (A) the withdrawal of funds from the reserve fund has been previously approved by the OMB. The action in this is a request to withdraw funds, which OMB then approves and allocates to the Agency, but in their approval they will be told or they will insist on knowing what the expenditure is for - or no approval.

34. See comments above.

35. I have pointed out on several other drafts what I believe to be a fundamental problem with this section, i.e., Agency General Counsel is the "legal counsel of the Director" and in that capacity he has a professional-client relationship and is bound by the ethics of his profession. I do not see that he can be appointed by the President with the advice and consent of the Senate and still be the legal counsel of the Director. I defer to OGC for further comment and advice on this section.

36. I have no suggestion for solution to the responsibilities of the General Counsel and Inspector General. A decision as to whether there should be two GC's and two IG's, one each for CIA and one each for Office of the DNI depends a great deal on how the Act is changed in Title I to specifically state that the DNI and D/CIA are one and the same individual. I foresee that one GC and one IG would undertake a very difficult job under either situation, first serving two masters and second the broad scope of activities involved with the Community responsibilities of the DNI versus those of the D/CIA. I defer to the GC and IG as to their concept of their responsibilities and how they wish to carry them out.

37. No comment is needed on a possible typo error.

38. To try to cover in a list every conceivable use which the name, seal or letters might be used is almost impossible - when one attempts to list every use, someone will find a loop-hole or use not listed and thus assume its use is permissible. Therefore, I prefer that paragraph 716 of Chapter 33 of Title 18 U.S.C. be amended under the Act, paragraph 431 (b)(1) in general and simple terms, such as "Any person who knowingly and without the express written permission of the Director of the Central Intelligence Agency uses the name 'Central Intelligence Agency', the initials 'CIA', the seal of the Central Intelligence Agency, or any colorable imitation of such name, initials, or seal in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Central Intelligence Agency shall be fined not more than \$20,000 or imprisoned not more than one year, or both."

39. I agree with the necessary and useful change you suggest for paragraph 431 (c)(1). I think it might be worthwhile to include not only "usefulness to the Agency" but "the pursuit of and continuing career opportunity of such officer or employee". *

40. I do not see a problem with paragraph 432 (b) since the exception at the end of the paragraph allows those actions permitted in paragraph 421 (h).

41. I do not believe the term "employee" as defined is acceptable. The phrase "specifically indicated" adds nothing to the definition, because no other type of employee is mentioned in the section. I believe the definition should be broadened to include all employees except foreign local hires. Your suggested change stated in your 41 b. is acceptable.

42. I defer to the Office of Finance as to whether paragraph 441 (b)(1 and 2) are sufficiently clear and whether the allowances are comparable to current allowances.

43. I do not find the 60 day waiting period burdensome. But I do find the Congress to be unsure, inconsistent and bordering on incongruous in that in paragraph 441 (b)(2) they specifically give authority for allowances the same as to employees of the Foreign Service and provide for the President by EO to extend any changes in the Foreign Service allowances to be extended to Agency employees, yet in subparagraph (3) they are stating "Stop, we are not sure, we want the opportunity to think about the extension of any allowances we have already stated you may have, and that period of thinking is 60 days." If they want to retain their prerogative then state that the Foreign Service Act of 1946 and any amendments to include the Act of 1956 apply to CIA employees and in future amendments of those Acts provision will be made to include CIA employees.

44. Within the Agency we have a narrow interpretation of the words "operational necessity" but in the usage in paragraph 441 (d)(1) I think a loose interpretation might be used which would include the items you raise in your note. If the Office of Finance does not hold this view then I suggest we provide for an exception for special circumstances as determined by the D/CIA.

45. I agree this section on retirement is not needed as a separate section. The addition under the authorities of the D/CIA to continue CIARDS would suffice.

*Additional comments are included in attached memos submitted by individual offices of the DDS&T.